

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DANNY LEE MULLIGAN

Claimant

VS.

DAHLSTEN TRUCK LINE, INC.

LIBERTY HOMES, INC.

Respondent

AND

GREAT WEST CASUALTY INSURANCE

FIREMAN'S FUND INSURANCE COMPANY

Insurance Carrier

AND

KANSAS WORKERS COMPENSATION FUND

Docket Nos. 181,106 and
183,589

ORDER

ON the 18th day of January, 1994, the application of the respondent for review by the Workers Compensation Appeals Board of an Order entered by Administrative Law Judge George R. Robertson, on December 13, 1993, came on before the Appeals Board for oral argument by telephone conference.

APPEARANCES

Claimant appeared by his attorney, Andrew Oswald, of Hutchinson, Kansas. Respondent, Dahlsten Truck Line, Inc., and its insurance carrier, Great West Casualty Insurance, appeared by their attorney, Terry Z. Austenfeld, of Overland Park, Kansas. Respondent, Liberty Homes, Inc., and its insurance carrier, Fireman's Fund Insurance Company, appeared by their attorney, Richard A. Boeckman, of Great Bend, Kansas. The Kansas Workers Compensation Fund appeared by its attorney, Matthew Bretz, of Hutchinson, Kansas. There were no other appearances.

RECORD

The record before the Appeals Board is the same as that considered by the Administrative Law Judge as stated in the Order of December 13, 1993.

ISSUES

The respondent, Dahlsten Truck Line, Inc., and its insurance carrier, Great West Casualty Insurance, have requested a review of the Preliminary Hearing Order of Administrative Law Judge George R. Robertson dated December 13, 1993, in which the Judge has ordered for preliminary hearing purposes that Dahlsten Truck Line, Inc., and Great West Casualty Insurance, provide medical and temporary total disability benefits to the claimant for an alleged accident of June 3, 1993. The issues addressed in this review are:

- (1) Whether claimant met with personal injury by accident arising out of and in the course of his employment with Dahlsten Truck Line, Inc., on June 3, 1993, for which he is entitled to workers compensation benefits.
- (2) Whether the order should be modified to correct the commencement date of temporary total disability benefits to December 9, 1993.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

- (1) For preliminary hearing purposes the Appeals Board hereby adopts and incorporates all findings of Administrative Law Judge George R. Robertson in his Order of December 13, 1993, that are not inconsistent with the specific findings set forth below.

Based upon the record as a whole, the Appeals Board finds that claimant did meet with personal injury by accident arising out of and in the course of his employment with Dahlsten Truck Line, Inc., on June 3, 1993. This conclusion is supported by the testimony of claimant and his witnesses, as well as the testimony of orthopedic surgeon, John A. Tanksley, M.D. Based upon the evidence presented, the Appeals Board finds it is more probably true than not that claimant did sustain a torn lateral meniscus as a result of his

work related accident on June 3, 1993, and that a cyst subsequently developed that caused an increase in symptomatology later that month. The evidence fails to establish that claimant experienced personal injury by accident as a result of his work activities at Liberty Homes, Inc., during the very brief period he worked for that company.

(2) At the preliminary hearing of December 9, 1993, the claimant requested temporary total disability benefits to commence the date of the hearing. Prior to the taking of evidence, claimant's counsel stated:

"Mr. Oswald: We are requesting medical treatment pursuant to the work related injury, and temporary total be paid from the date of this hearing.

The Court: From today's date?

Mr. Oswald: Yes. Mr. Mulligan is currently on unemployment right at this time."

Based upon the above, the Appeals Board finds it was an oversight of the Administrative Law Judge to order the commencement of temporary total disability benefits as of August 25, 1993. Therefore, the Order of the Administrative Law Judge should be modified to reflect the proper commencement date of temporary total disability benefits to be December 9, 1993.

AWARD

WHEREFORE, it is the finding, decision and order of the Appeals Board for preliminary hearing purposes that the Order of Administrative Law Judge George R. Robertson dated December 13, 1993, is modified to require the respondent, Dahlsten Truck Line, Inc., and its insurance carrier, Great West Casualty Insurance, to commence payment of temporary total disability benefits on December 9, 1993. All other orders of the Administrative Law Judge are adopted and affirmed.

IT IS SO ORDERED.

Dated this ____ day of January, 1994.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

cc: Andrew Oswald, P.O. Box 1362, Hutchinson, Kansas 67504-1362
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George R. Robertson, Administrative Law Judge
George Gomez, Director